

END DEATH PENALTY LA

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75 Law Professors and Legal Scholars Call for an End to the Death Penalty in Los Angeles County

LOS ANGELES – A group of 75 law professors and legal scholars from leading institutions have released an open letter calling for Los Angeles District Attorney Jackie Lacey to end the county's costly and racially-biased death penalty practices.

Los Angeles County produces more death sentences than anywhere else in the country and, shockingly, DA Lacey continues to pursue the death penalty despite Governor Gavin Newsom's statewide

moratorium on the death penalty issued earlier this year.

The American death penalty is broken in every way. Look closely: in case after case, the accused is either intellectually disabled with an IQ below 75, severely mentally ill, has experienced extraordinary and unspeakable sexual or physical abuse, or shows signs of all of the above. We execute not the worst of the worst, as the Supreme Court has mandated, but society's most vulnerable and least lucky.

In trial after trial, lawyers fail to provide effective representation for their clients. They conduct no investigation into the case, spend little time with the client or their family, and often present little to no testimony at trial or during the sentencing phase. Over 165 people have been exonerated from death row since 1973. In part because of ineffective representation, it is more likely that those individuals will have their cases overturned than have the state actually execute them. This deplorable lawyering also means that in far too many cases, the jury does not understand the full extent of a person's impairments and illness. While the jury's ability to evaluate "the characteristics of the person who committed the crime" is a constitutionally necessary, "bedrock premise on which our system of capital punishment depends," *Elmore v. Holbrook*, 137 S.Ct. 3, 11 (2016) (Sotomayor, J., dissenting) (citing *Gregg v. Georgia*, 428 U.S. 153, 197 (1976)) (joint opinion of

Stewart, Powell, and Stevens), frequently the presence of apparent mental illness, cognitive impairments, or extreme trauma goes unacknowledged by counsel and, as a result, unknown by jurors deciding his or her fate.

The ultimate punishment is also becoming increasingly arbitrary and obsolete. There are 327 million people in this country and in a year, around 16,000 homicides, but juries returned death sentences in just 42 murder cases last year. Compare that to 315 in 1996. Over 21 jurisdictions, most recently, New Hampshire, have abolished it. Four jurisdictions, including California, have issued a moratorium on executions. And eight jurisdictions, including the federal government, have shown substantial disuse. It is also imposed in a geographically arbitrary way: of the 3,000 counties in this country, death sentences came from just 36 last year.

The Eighth Amendment to the United States Constitution prohibits a system of punishment that is cruel and unusual, and that is what our system of capital punishment is. The Sixth Amendment guarantees the right to effective counsel, a right that becomes more important where death is the final sentence, and yet capital defendants rarely receive it. It is time for us to stop pretending that the death penalty can or should work.

Los Angeles Must End Its Unconstitutional Death Penalty Machine.

In Los Angeles, District Attorney Jackie Lacey seeks the death penalty with an enthusiasm and consistency unmatched by many of her counterparts across the country, as documented in the ACLU's recent death penalty report. The nexus of capital punishment in this country resides not in Texas, Georgia, or Oklahoma, but in Los Angeles County, California. As academics and legal scholars acutely aware of its failings, we are deeply disturbed by this practice. Not only does Lacey seek and obtain the death penalty more often than almost any other prosecutor, those sentenced to death under her watch have been exclusively people of color. She pursues the death penalty in the face of terrible defense lawyering and notwithstanding a moratorium on executions in California. She persists in this policy even though a majority of Los Angeles county voters favored the abolition of capital punishment in both 2012 and 2016. We call for an end to this practice in Los Angeles County.

As Justice Stephen Breyer noted recently in a dissent from a denial of certiorari, “[the] geographic concentration of [death sentences] reflects a nationwide trend. Death Sentences, while declining in number, have become increasingly concentrated in an ever-smaller number of counties.” *Jordan v. Mississippi*, 585 U.S. ____ (2018). Nowhere is that more true than in Los Angeles County, which has produced more death sentences than anywhere in America, and it is one of three counties to have over 10 death sentences in the last five years, putting it in

the class of just Riverside, California, and Maricopa, Arizona. It is the only place where prosecutors obtained more than one death sentence in 2018. All of this occurred under the watch of the current District Attorney, Jackie Lacey.

The ACLU report also shows that Los Angeles disproportionately imposes the death penalty against people of color. Since 2012, juries have never sentenced a white person to death, but they have sentenced thirteen people who are Latinx, eight people who are black, and one who is Asian to death by the state. And prosecutors treat the death of a white person differently than the death of a black person: when white people are killed in Los Angeles, those found responsible are sentenced to death at a significantly higher rate than when the victim is non-white. Not only do these practices violate the Eighth Amendment, they also implicate the Constitutional guarantee of Equal Protection under the law.

People who receive death sentences in Los Angeles County largely received ineffective assistance of counsel. Defending an accused in a death penalty case requires an extremely skilled trial lawyer with expertise in trauma, mental health, and investigation. The accused in Los Angeles receive abhorrent counsel in case after case. Of the 22 people LA sent to death row since 2012, five had lawyers who have previously been suspended or disbarred. One lawyer is currently under investigation by the state licensing agency, and two of the accused represented themselves, a frequent sign of a person with a

defense team ill-equipped to handle mental illness or the seriousness of the work. Only three men received representation from institutional public defense organizations--offices with specialized training and staff dedicated to capital cases. Luck of the draw should not determine whether a person lives or dies--but in Los Angeles, it does.

These cases are rife with likely violations of the accused's Sixth Amendment right to counsel. We are disheartened that prosecutors repeatedly and routinely seek such a sentence in the face of such substandard representation.

The District Attorney Must Stop Seeking Sentences of Death

Time and again, we have seen that the administration of the death penalty violates these foundational pillars of the criminal justice system, namely, the right to counsel and the prohibition against cruel and unusual punishment. The death penalty is cruel in its treatment of society's most broken. It is unusual in its geographic and racial application. And it is imposed not on those who are the worst of the worst, but on those with the least effective counsel. The recent study of the death penalty in Los Angeles only illustrates the problem.

A prosecutor's job, first and foremost, is to seek justice and uphold the constitution. By leading the nation in its use of the death penalty, the District Attorney's office in Los Angeles violates its solemn

oath. We call on the office to end the county's experiment with the broken machinery of death.

ACLU death penalty report:

<https://www.aclu.org/report/district-attorney-jackie-laceys-shameful-death-penalty-record-new-report-shows-la-county-top>

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